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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

SHRIVER II, JAMES A

ART UNIT

PAPER NUMBER

3618

DATE MAILED: 06/05/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/835,638

Applicant(s)

GONTHIER, JEAN-FRANCOIS

Examiner

J. Allen Shriver

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 April 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-2, 4-6, 8-10, 13, 15-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-2, 4-6, 8-10, 13, 15-20, 23-25, and 28-32 is/are rejected.
- 7) ☒ Claim(s) 21, 22, 26, 27, 30 and 31 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 April 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on April 24, 2003 has been entered, wherein claim 1 was amended; claims 3, 7, 11-12, and 14 were cancelled and new claims 30-32 were added.

Priority

2. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. **Claim 32 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.** In claim 32, lines 17-19, the phrase "said first band of said linkage extending longitudinally straight from said first fastener to said tightening device and said second band of said linkage extending longitudinally straight from said second fastener to said

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tightening device” is indefinite because looking at Figure 5, Examiner does not understand how the first and second bands of the linkage are longitudinally STRAIGHT from the fastener to the tightening device. The bands are not straight, but are curved from the fastener to the tightening device.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. **Claims 1-2, 4-6, 8-10, 13, 15, 18-19, 23, 28 and 32 are rejected, as understood, under 35 U.S.C. 102(e) as being anticipated by Reuss (US Patent 6,250,651 B1).** Reuss discloses a binding (70) to retain a boot (75) on a gliding or rolling apparatus (74), said binding comprising a base (See Figs. 7-8) for supporting the boot, said base including a surface extending along a plane; a first lateral flange (72), a second lateral flange transversely spaced from said first lateral flange (See Fig. 8), said first and second lateral flanges extending upwardly relative to said surface of the base, at least one linkage connecting said first flange to said second flange (See Figs. 7-8); said linkage including a first band (26) extending from one fastening end to a free end, a first fastener attaching said fastening end of said first band to said first flange, said linkage further including a tightening device (24) attached to said second flange, said tightening device facilitating an adjustment of a length of said linkage by removably retaining a portion of said first band; said first band (26) of said linkage extending longitudinally straight from said first

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fastener to said tightening device and said second band of said linkage extending longitudinally straight from said second fastener to said tightening device; an abutment (40) being fixed to said first band toward said free end of said first band, so as to be located on an opposite side of the tightening device with respect to said fastening end of said first band, thus preventing a separation of said first band and said tightening device (See Figs. 6-8); at least one linkage of said at least one linkage is movable relative to said first and second lateral flanges to a position extending substantially along a plane parallel to said plane of said base (See Fig. 7 and column 6, lines 50-54); further comprising a second fastener (See Fig. 8), wherein said linkage includes a second band (42), said second fastener attaching said second band to said second lateral flange, said tightening device being fixed to said second band (See Figs. 6-8); wherein said flanges are attached to said base; wherein said tightening device has a passage for guiding said first band, said abutment being wider than said passage (See Fig. 6); wherein said first and second fasteners of each linkage are journals (78); wherein one guide (46) said abutment along said second band (See Figs. 6-8); further comprising a base plate (See Fig. 8) for supporting the boot, said base plate including a surface extending along a plane, wherein at least one linkage of said at least one linkage is pivotal about a respective one of said journals to a position substantially contained in a plane parallel to said plane of said base plate (See Fig. 8), further comprising a rear arch (82) for supporting a rear of the boot, said rear arch connecting said first and second lateral flanges, wherein a length of each of said at least one linkage is constructed and arranged so that, when said each of said at least one linkage is forwardly positioned, each of said at least one linkage extends around a front of the boot when the boot is supported on said base plate and in contact with said rear arch (See Fig. 7); wherein said first fastener extends from said first band to said

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first flange and said second fastener extends from said second band to said second flange; wherein said first band includes an inner surface facing said base and an outer surface facing away from said base, and wherein said abutment extends away from said outer surface of said first band (See Figs. 5-6 wherein the abutment 40 extends away from said outer surface of said first band 26).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. **Claims 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reuss (US Patent 6,250,651 B1).** Reuss discloses a binding as set forth in paragraph 7 above, but does not specifically disclose wherein said at least one linkage includes a front linkage having a length within a range of about 25-50 centimeters and a rear linkage having a length within a range of about 45-85 centimeters. In column 5, lines 15+, Reuss discloses providing various range adjustment of the straps to accommodate different sized boots. At the time of the invention, it would have been within the requisite skill of a person of ordinary skill in this art to provide a length of adjustment of about 25-50 cm for the front linkage and about 45-85 cm for the rear linkage. The motivation for doing so would have been to allow for the length adjustment of straps to accommodate different sized boots.

9. **Claims 20, 24-25 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reuss (US Patent 6,250,651 B1) in view of Bumgarner (US Patent 5,758,895).** Reuss discloses a binding as set forth above, but does not disclose wherein said free end of said first band has a longitudinally tapered shape, and wherein said abutment has a pair of lateral teeth and wherein said abutment is substantially in a form of a wedge, said wedge having a surface substantially perpendicular to said outer surface of said first band and facing longitudinally toward said tightening device. Bumgarner discloses wherein said free end of said first band has a longitudinally tapered shape (See Fig. 1), and wherein said abutment has a pair of lateral teeth and wherein said abutment is substantially in a form of a wedge (24), said wedge having a surface substantially perpendicular to said outer surface of said first band and facing longitudinally toward said tightening device (See Figs. 4-6). At the time of the invention, it would have been obvious to a person of ordinary skill in this art to modify the shape of the free end of Reuss's first band to have either a tapered shape with lateral teeth or a wedge in view of the teaching of Bumgarner. The motivation for doing so would have been to prevent the free end of the first band from passing through the tightening device.

Allowable Subject Matter

10. Claims 21-22, 26-27 and 30-31 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

11. Applicant's arguments filed April 24, 2003 have been fully considered but they are not persuasive. On page 12, Applicant contends that RUESS fails to teach or suggest the limitations of claim 23, specifically an abutment extending away from said outer surface of said first band. Additionally, Applicant states that claim 28, containing the same claim limitation, has been rejected upon a combination of REUSS and BUMGARNER. This argument is now moot because Examiner has changed the rejection of claim 28 to be anticipated by RUESS and maintains that RUESS anticipates the limitations of claim 23. Specifically, as shown in Figures 5-6 of RUESS, the abutment 40 extends away from said outer surface of said first band 26.

On page 12, Applicant argues that the strap disclosed in REUSS is never contained in, nor does it extend along a plane parallel to the base. First, the limitation of claim 1 only requires that the linkage is movable "to a position extending SUBSTANTIALLY along a plane parallel to said plane of said base. Applicant points out that REUSS in column 6, lines 38-49, states that the linkage 20 is held above the horizontal plane of the base plate when rotated to hold the toe strap approximately 10° above the horizontal plane of the base plate. Being held at a position 10° above the horizontal plane of the base plate meets the current limitation requiring that the linkage only be SUBSTANTIALLY along a plane parallel to the plane of the base.

Furthermore, in the column 6, lines 50-54, REUSS states that "the straps and/or the base plate may be configured in any manner to hold the toe strap at *any* desired position relative to the base plate when rotated to the forward position." This teaching in REUSS discloses that the strap may be rotated forward into a plane parallel to the base plate. Applicant argues that the abutment 90 disclosed in RUESS is configured to hold the toe strap approximately 10° above the

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horizontal plane of the base plate, and thus the abutment prevents the toe strap from being parallel to the base plate. Additionally, Applicant argues that where RUESS explains that the straps may be configured in any manner to hold the toe strap 20 at any desired position relative to the base plate when rotated to the forward position (see column 6, lines 48-54), this means, in the context of REUSS's disclosure, that such position is 10° or more. Examiner disagrees with Applicant's argument, because REUSS states that the abutment positioning the strap at a position 10° from the plane of the base is only one embodiment, thus the next sentence in REUSS is not limited by the 10° from the base plate. Therefore, the column 6, lines 50-54 means that the toe strap can be positioned at ANY desired position ranging from 0° (toe strap folded all the way down parallel to the base plate) to approximately 90°.

Finally, as shown in Figure 7 of REUSS, the linkage/strap's top portion when moved to an upright position relative to the base plate, lies in a position substantially along a plane parallel to said plane of said base. Therefore, Examiner disagrees with Applicant's argument that REUSS does not anticipate the limitations of amended claim 1.

On page 17, Applicant argues that the combination of REUSS and BUMGARNER fails to disclose the limitations of independent claims 25 and 28 and the claims dependent therefrom. Examiner disagrees with these arguments because the BUMGARNER reference is relied on to disclose an abutment having lateral teeth as shown in Figure 1 and a strap having a tapered end. A person of ordinary skill in this art would then have the requisite skill to use BUMGARNER to modify the shape to the abutment disclosed in REUSS.

Conclusion


Any inquiry concerning this communication or earlier communications from the examiner should be directed to J. Allen Shriver whose telephone number is (703) 308-1224. The examiner can normally be reached on M-Th (7:30-6:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Johnson can be reached on (703) 308-0885. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 306-4195 for regular communications and (703) 306-4195 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

J. Allen Shriver
Examiner
Art Unit 3618

JAS
May 30, 2003


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6/12/03